

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
	:
LEHMAN BROTHERS HOLDINGS INC., <i>et al.</i> ,	:
	:
Debtors.	:
	:
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Chapter 11 Case No.
08-13555 (JMP)
(Jointly Administered)

**STIPULATION, AGREEMENT, AND ORDER
APPROVING SETTLEMENT AGREEMENT BETWEEN BNC
MORTGAGE LLC AND SAN DIEGO-FRAZEE, LLC REGARDING PREPETITION
AND POSTPETITION CLAIMS ARISING UNDER THE 1450 FRAZEE ROAD LEASE**

TO THE HONORABLE JAMES M. PECK
UNITED STATES BANKRUPTCY JUDGE:

BNC Mortgage LLC ("BNC"), an indirect subsidiary of Lehman Brothers Holdings Inc. ("LBHI"), as debtor and debtor in possession, LBHI, and Core Fund Frazee Property, LLC ("Landlord"), hereby enter into this stipulation, agreement, and agreed order (the "Stipulation, Agreement, and Order") and agree, as follows:

RECITALS

A. Commencing on September 15, 2008 and periodically thereafter, LBHI and certain of its subsidiaries (collectively, the "Debtors") commenced with this Court voluntary cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On January 9, 2009 (the "Commencement Date"), BNC commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. On September 17, 2008, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed the statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code.

C. On January 19, 2009, the U.S. Trustee appointed Anton R. Valukas as examiner in the above-captioned chapter 11 cases (the “Examiner”) and by order, dated January 20, 2009 [Docket No. 2583] the Court approved the U.S. Trustee’s appointment of the Examiner.

D. BNC leased certain nonresidential real property, located at 1450 Frazee Road, San Diego California (the “Frazee Road Property”), from the Landlord pursuant to a lease dated July 3, 2001 (as amended, the “Lease”). Under the terms of the Lease, BNC agreed to pay the Landlord \$21,806.93 per month, plus certain operational and tax expenses, through November 30, 2010 in exchange for the use of the Frazee Road Property.

E. BNC subleased a portion of the Frazee Road Property to LBHI pursuant to a lease agreement dated February 17, 2006 (the “Sublease”). The Sublease was among the assets purchased by Barclays Capital Inc. pursuant to the agreement for the sale of LBHI’s Broker-Dealer PIM Business to Barclays Capital Inc., dated September 22, 2008 (as amended, the “Barclays APA”) [Docket No. 280]. Sections 8.11(f) and (g) of the Barclays APA permitted the Excluded Employees (as defined under the Barclays APA) and the Transferred Employees (as defined under the Barclays APA) to occupy and use the Frazee Road Property without charge or consideration for a period of nine (9) months after the closing of the Barclays APA. Such nine (9) month period expired on June 22, 2009.

F. On February 4, 2009, BNC filed a motion (the “BNC Rejection Motion”) [Docket No. 2730], pursuant to sections 363(b), 365(a), and 554(a) of the Bankruptcy Code and Rules 6004, 6006, and 9014 of the Bankruptcy Rules, for authorization to (i) reject certain leases

and subleases of nonresidential real property and (ii) sell or abandon certain *de minimis* assets. The Court granted the BNC Rejection Motion by order dated February 24, 2009 [Docket No. 2914]. BNC did not include the Lease among the leases subject to the BNC Rejection Motion because LBHI was required to make the Frazee Road Property available to Excluded Employees and the Transferred Employees in accordance with the terms of the Barclays APA.

G. Pursuant to section 365(d)(4) of the Bankruptcy Code, BNC had 120 days after the commencement of its chapter 11 case to either assume or reject the Lease. BNC did not seek to assume or reject or obtain an extension of time to assume or reject the Lease during the 120 days after the commencement of its chapter 11 case because Barclays Capital Inc. and the Landlord entered into a direct lease for the Frazee Road Property. As a result, the Lease was deemed rejected as of May 11, 2009.

H. BNC did not pay the prepetition rent for December 2008 and has not paid any rent since the commencement of its chapter 11 case. BNC estimates that the Landlord's claim for post-petition rent arising after the Commencement Date through and including May 10, 2009 is approximately \$103,500.

I. BNC, LBHI, and the Landlord have agreed to a compromise and settlement of the Landlord's claims as described herein.

AGREEMENT:

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the BNC and the Landlord, through their undersigned counsel, that:

1. The Landlord agrees to waive any and all claims against BNC and LBHI arising as a result of the rejection of the Lease and Sublease.

2. Within ten (10) business days after the date that the Court's approval of this Stipulation, Agreement, and Order becomes final and nonappealable, LBHI shall pay the

Landlord \$65,000 in complete settlement, satisfaction, release, and discharge of the Landlord's claims for any amounts due under the Lease and Sublease subsequent to the Commencement Date.

3. LBHI and BNC agree to abandon to the Landlord all personal property located at the Frazee Road Property as of August 7, 2009.

4. The limited relief set forth herein shall not be construed as an admission of liability by BNC or LBHI of any pre- or post-petition claims or causes of action arising from or in relation to the Lease or Sublease.

5. Upon entry of this Stipulation, Agreement, and Order, the Landlord, BNC, and LBHI hereby forever waives and releases any and all pre and post-petition claims, liabilities, causes of action, demands, and damages of whatever kind or nature and whether known or unknown against each other arising before or after the commencement of BNC's and LBHI's chapter 11 cases from or in relation to the Lease or Sublease; *provided, however*, that nothing contained herein shall release BNC and the Landlord from their respective obligations or waive their respective rights set forth in this Stipulation, Agreement, and Order, including the Landlord's right to payment of the Postpetition Claim.

6. BNC, LBHI, and the Landlord agree that this Court shall be the exclusive forum with respect to any disputes or controversies relating to or arising under this Stipulation, Agreement, and Order.

7. This Stipulation, Agreement, and Order shall have no force or effect against BNC and LBHI unless and until it is approved by the Bankruptcy Court and is final and nonappealable.

8. This Stipulation, Agreement, and Order can only be amended or otherwise modified by a signed writing executed by the parties.

9. The person who executes this Stipulation, Agreement, and Order by or on behalf of each respective party represents and warrants that he or she has been duly authorized and empowered to execute and deliver this Stipulation, Agreement, and Order on behalf of such party.

10. This Stipulation, Agreement, and Order may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Stipulation, Agreement, and Order to present any copy, copies, electronic copies, or facsimiles signed by the parties here to be charged.

11. This Stipulation, Agreement, and Order shall inure to the benefit of the parties hereto and their respective successors and assigns.

12. This Stipulation, Agreement, and Order shall be governed by the laws of the State of New York, without regard to the application of New York's conflict of law principles.

Dated: August 6, 2009
Dallas, Texas

/s/ Monica S. Blacker
Monica S. Blacker

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Attorneys for Core Fund Frazee Property, LLC

Dated: August 6, 2009
New York, New York

/s/ Jacqueline Marcus
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Attorneys for Debtors
and Debtors in Possession

SO ORDERED:

Dated: New York, New York
August 25, 2009

s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE